Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.3

CUSTOMS Appeal No. 10120 of 2021-DB

[Arising out of Order-in-Original/Appeal No MUN-CUSTM-000-APP-105-108-20-21 dated 28.10.2020 passed by Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD]

HLG TRADING **...Appellant**

Through Its Proprietor Shri Gagan Goyal Space E 3 Floor
Ludhiana,
Panjab

VERSUS

C.C.-MUNDRA **...Respondent**

Office Of The Principal Commissionerate Of Customs, Port User
Buld. Custom House Mundra, Mundra
Kutch
Gujarat-370421

WITH

i. **Customs Appeal No. 10121 of 2021 (HLG TRADING)**
ii. **Customs Appeal No. 10122 of 2021 (HLG TRADING)**
iii. **Customs Appeal No. 10123 of 2021 (HLG TRADING)**

APPEARANCE:

Shri B. Satish Sunder, Shri Shravan Kochar, Advocates for the Appellant
Shri Rajesh R Kurup, Superintendent (Authorized representative) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU

Final Order No. A/ 12624-12627 /2023

DATE OF HEARING:14.11.2023
DATE OF DECISION:16.11.2023

RAMESH NAIR

These appeals are directed against a common order-in-appeal No. MUN-CUSTM-000-APP-105 to 108-20-21 dated 28.10.2020 passed by Commissioner of Customs (Appeals) Ahmedabad. By the said order learned

Commissioner (Appeals) upheld the enhancement of value of imported goods which was done by the Adjudicating Authority by passing a speaking order. The Adjudicating Authority enhanced the value on the basis of NIDB Data. Accordingly, the value declared by the appellant i.e 1.42 USD per Kg. was enhanced to 2.20 USD per Kg. Being aggrieved by the order-in-appeal, the present appeals are filed by the appellant.

2. Shri B. Satish Sunder with Shri Shravan Kochar, learned Counsels appearing on behalf of the appellant submits that the enhancement was done solely on the basis of NIDB Data without considering the factor such as Country of export, quantity, commercial level etc. Therefore, the enhanced value is illegal and incorrect. He further submits that the appellant was not provided the NIDB Data, it is only provided along with order-in-original. Therefore, the appellant did not get the opportunity to know the reason of enhancement i.e NIDB Data. He further submits that the appellant's import is under a contract and the contract was also not considered by the Adjudicating Authority. Therefore, the basis of enhancement of the value is incorrect and illegal. He placed reliance on the following judgments:

- 2007 (211) ELT 206 (Mad.)-Pushpanjali Silk Pvt Ltd Vs. CC, Chennai
- Kelvin Infotech Pvt Ltd Vs. CC- 2015 (316) ELT 146 (Tri-Del.) as affirmed by the Hon’ble Supreme Court in Commr. Vs. Kelvin Intech- 2016 (339) ELT A291 (SC)
- Final Order No. A/61809/2017-CU-DB dated 15.09.2017 of the CESTAT, Chandigarh in the case of Diamond Mink Blankets Ltd. Vs. CCE
- Sigma Power Products Pvt Ltd- 2017 (350) ELT 10 (Cal.)
- Century Metal Recycling Pvt Ltd-2019 (367) ELT 3 (SC)
- Garva Enterprises Vs. C.C- Nhava Sheva-2018 (362) ELT 134 (Tri.-Mum.)

- Vijaya International Impex Vs. CC, Chennai- 2018 (359) ELT 270 (Tri.-Chennai)
- Aakash Enterprises Vs. C.C, New Delhi-2017 (358) ELT 987 (Tri.-Del.)
- Marvel Agencies Vs. CC, New Delhi-2017 (348) ELT 534 (Tri.-Del.)
- Bayer India Ltd. Vs. CC-2006 (198) ELT 240 (Tri) which has been affirmed by the Hon'ble Supreme Court as reported in CC, Mumbai Vs. Bayer Corp Science Ltd-2015 (324) ELT 17 (SC)
- Venture Impex Pvt Ltd Vs. CC, New Delhi-2016 (338) ELT 759 (Tri)

3. Shri Rajesh R Kurup, learned Superintendent (Authorized representative) appearing on behalf of the revenue reiterates the finding of the impugned order.

4. We have carefully considered the submissions made by both the sides and perused the records. We find that the entire basis for enhancement of the value is one NIDB Data. However, the said NIDB Data was not provided to the appellant during the Adjudication process, therefore the appellant did not get opportunity to defend their case countering the NIDB Data. It is admitted fact that the NIDB Data was enclosed as Annexure A to order-in-original and the same was not provided before passing the order to the appellant. Moreover, the appellant vehemently argued that the supply is under a contract. He also referred to the contract made with the supplier of imported goods. It is observed that the said contract was also not considered while passing the adjudication order. Therefore, we find that there is grave violation of principles of natural justice in adjudication process and said faulty adjudication was upheld by the Commissioner (Appeals). Therefore, we are of the view that in the interest of principles of natural justice and fair play in the adjudication, the matter needs to be remitted back to the Adjudicating Authority.

5. Accordingly, we set aside the impugned order and allow the appeals by way of remand to the Adjudicating Authority for passing a fresh order aafter affording sufficient opportunity of hearing and making submission to the appellant.

(Pronounced in the in the open Court on 16.11.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

PALAK